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 U.S. DISTRICT COURT E.D.N.Y.
 ★ MAY 20 2010 ★

BROOKLYN OFFICE

Attorneys for Defendants
 ACE US HOLDINGS, INC. and
 INDEMNITY INSURANCE COMPANY
 OF NORTH AMERICA

CV 10- 2307

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

-----X

POSILLICO CIVIL, INC.; J.D.
 POSILLICO, INC. and POSILLICO, LLC

Plaintiffs,

vs.

ACE USA, INC. and INDEMNITY
 INSURANCE COMPANY OF
 NORTH AMERICA;

Defendants.

-----X

WEXLER, J

Civil Action No.

LINDSAY, M.J.**NOTICE OF REMOVAL**

Defendants ACE USA HOLDINGS, INC. (improperly sued herein as "ACE USA, Inc.") and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA (hereinafter collectively referred to as "IINA" or defendants), by their attorneys COZEN O'CONNOR, respectfully files this Notice of Removal pursuant to 29 U.S.C. Sec. 1441(a), and in support thereof states the following:

1. On or about April 27, 2010, plaintiffs POSILLICO CIVIL, INC.; POSILLICO, INC. and POSILLICO, LLC commenced an action against IINA by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Suffolk, Index No. 2010/12437 (the "State Court Action").

2. In the State Court action, plaintiffs have filed a lawsuit against defendants alleging: (1) there was an actual and justiciable controversy as to whether IINA was obligated under the IINA policy to provide a defense and indemnity in favor of plaintiffs, and to reimburse plaintiffs for their costs and expenses arising from the underlying personal injury lawsuit; and (2) breach of a certain Policy of Insurance issued by IINA by failing to defend and indemnify plaintiffs and to reimburse plaintiffs for their costs and expenses arising from underlying personal injury lawsuit.
3. Plaintiffs have not alleged a quantum of damages in the State Court Action. However, attached as Exhibit "B" to the Complaint in the State Court Action is the complaint in the underlying personal injury action which stated as follows:

89. That on August 22, 2008, while the plaintiff SABINO FERREIRA, was working at the above-mentioned Bridge Replacement Project when we was caused to be injured when the dirt pathway collapsed and he was caused to fall to the ground.
4. Upon information and belief, the plaintiff in the underlying personal injury action suffered damage to his left knee, lower back and other personal injuries. As such, IINA can represent with certainty that the quantum of damages at issue will exceed significantly seventy-five thousand dollars (\$75,000.00). Plaintiffs have not specified a quantum for their costs and expenses arising from the underlying personal injury action, but it is undisputed that plaintiffs' costs and expenses arising from the underlying personal injury action would be added to whatever damages were sought by Mr. Sabino Ferreria, the plaintiff in the underlying personal injury action, for the purposes of calculating the quantum of damages for diversity jurisdiction purposes.
5. On May 7, 2010, IINA received a courtesy copy of the Summons and Verified Complaint filed in the State Court Action.

6. A true and correct copy of the Summons and Verified Complaint is annexed hereto as Exhibit "1," and, upon information and belief, constitutes all process, pleadings, and orders filed in the State Court Action.
7. The Eastern District of New York, Long Island Courthouse embraces the place where the State Court Action is pending.
8. This Notice of Removal is being filed with this Court within thirty (30) days after IINA first received, through service or otherwise, a copy of the initial pleading setting forth the claim for relief upon which the State Court Action is based.
9. Plaintiff Posillico Civil, Inc. is a New York corporation with a principal place of business located at 1750 New Highway, Farmingdale, New York 11735.
10. Plaintiff J.D. Posillico, Inc. is a New York corporation with a principal place of business located at 1750 New Highway, Farmingdale, New York 11735.
11. Plaintiff Posillico, LLC is a New York corporation with a principal place of business located at 1750 New Highway, Farmingdale, New York 11735.
12. Defendant ACE USA HOLDINGS, INC. (improperly sued herein as "ACE USA, Inc.") is a Delaware corporation with a principal place of business located at 436 Walnut Street, Philadelphia, PA 19103.
13. Defendant INDEMNITY INSURANCE COMPANY OF NORTH AMERICA is a Pennsylvania corporation with a principal place of business located at 1601 Chestnut Street, Philadelphia, PA 19103.
14. Defendant ACE USA HOLDINGS, INC. (improperly sued herein as "ACE USA, Inc.") has been improperly named in this lawsuit in that ACE USA HOLDINGS, INC. is not an insurance company and serves as a holding company within the ACE group of companies. For the sake of good order, "ACE USA, Inc." does not exist as a corporate

entity within the ACE group of companies. ACE USA HOLDINGS, INC. should not be named as a party to this lawsuit.

15. As demonstrated above, the district courts of the United States have original jurisdiction over this action pursuant to 28 U.S.C. Sec. 1332 in that the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states.
16. There is supplemental jurisdiction over this action pursuant to 28 U.S.C. Sec. 1333 in that the matter in controversy involves an interpretation of a certain marine policy of insurance which related to maritime commerce. IINA issued a commercial marine liability policy of insurance. *See McAllister Brothers, Inc. v. Ocean Marine Indemnity Co.*, 742 F.Supp. 70 (S.D.N.Y. 1984) (dispute involving marine insurance was within the original admiralty jurisdiction of federal courts and could be removed from state court); *Monarch Industrial Corp. v. American Motorists Ins. Co.*, 276 F.Supp. 972 (S.D.N.Y. 1967) (suit against marine cargo insurer was properly removed to federal court); *Wunderlich v. Netherlands Ins. Co.*, 125 F.Supp. 877 (S.D.N.Y. 1954) (dispute over interpretation of marine insurance policies was within original jurisdiction of federal court and savings to suitors clause did not defeat removal).
17. IINA, upon filing of this Notice of Removal, will, as required by 28 U.S.C. Sec. 1446(d), file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Suffolk and will serve a copy of same upon all parties.
18. In filing this Notice of Removal, IINA does not waive any defense, limitation, exclusion, warranty, exception or argument as set forth in the subject policy of insurance pursuant to federal maritime common law and New York state law.

19. Since the district courts of the United States have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States, this Court has jurisdiction over this action pursuant to 28 U.S.C. Sec. 1332.
20. IINA, upon filing of this Notice of Removal, will, as required by 28 U.S.C. Sec. 1446(d), file a copy of the Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of Suffolk, and will serve a copy of same upon plaintiff.

WHEREFORE, defendants ACE USA HOLDINGS, INC. and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA respectfully submit that this Notice of Removal complies with the statutory requirements and respectfully requests that the action now pending against it be removed from the Supreme Court of the State of New York, County of Suffolk to this Court, that this action proceed in this Court as a properly removed action, and that defendants have such other and further relief as justice requires.

Dated: New York, New York
May 18, 2010

Respectfully submitted,

COZEN O'CONNOR
Attorneys for Defendants
ACE USA HOLDINGS, INC. and
INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA

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